

**Assessment of Public Comments Received from January 27 to April 5, 2021
on the NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION'S
Proposed 6 NYCRR PART 326.2(c)(17) Regulation
June 30, 2021**

In January 2021, the New York State Department of Environmental Conservation (Department) proposed regulations to prohibit all sale, distribution, possession, or use of pesticides with the active ingredient chlorpyrifos. Notice of the proposed rulemaking appeared in the January 27, 2021 State Register as well as in the DEC's Environmental Notice Bulletin. Public comments were received from January 27, 2021 through April 5, 2021. A virtual public hearing was held on March 30, 2021. This Assessment of Public Comments responds to all substantive comments received during the public comment period, including written comments as well as oral statements made during the public hearing. Comments received were compiled, reviewed, and categorized based on their content. All commentors were assigned a commentor number as represented in the table at the end of this document.

Comment 1: The majority of commentors supported the prohibition of chlorpyrifos to protect public health, particularly farmworkers, farm families, children, and others living near agricultural areas. Several commentors referred to various studies suggesting that chlorpyrifos exposure may be linked to cancer, Parkinson's disease, reduced IQ, memory loss, attention deficit disorder, developmental delays, other neurological health effects, and low birth rates.

(Commenters 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35)

Response to comment 1: Your comments have been noted and support the proposed regulation.

Comment 2: Two commentors supported the prohibition of chlorpyrifos since they viewed this prohibition as an environmental justice matter. The commentors proposed that low-income African American and Latino families, including farmworker families, continue to be impacted the most by this pesticide.

(Commentors 15, 34)

Response to comment 2: Your comments have been noted and support the proposed regulation.

Comment 3: One commentor stated that experts at Cornell have identified alternatives to chlorpyrifos that are available to New York farmers and businesses. These includes less-toxic options for controlling borers and spotted lantern fly at orchards, cabbage maggots and onion maggots at vegetable farms, and annual bluegrass weevil on turf grass at golf courses.

(Commentor 11)

Response to comment 3: Your comments have been noted and support the proposed regulation.

Comment 4: Commentors supported this proposed regulation due to concerns about the effects of chlorpyrifos on birds. Several commentors referred to information in the Environmental Protection Agency's (EPA) recent draft biological evaluation for chlorpyrifos. This evaluation indicates that chlorpyrifos is likely to adversely affect more than 100 bird species listed under the Endangered Species Act.

(Commentors 11, 13, 15, 20, 21, 23, 32, 35)

Response to comment 4: Your comments have been noted and support the proposed regulation.

Comment 5: Commentors supported this proposed regulation due to concerns identified regarding the toxicity of chlorpyrifos to mammals, fish, amphibians, aquatic and terrestrial invertebrates, reptiles, and plants. To support these concerns, they mentioned that the biological opinion conducted by the US Fish and Wildlife Service found that chlorpyrifos is "likely to adversely affect" 97% of species listed under the Endangered Species Act.

(Commentors 11, 15, 18, 20, 21, 23, 29, 32, 35)

Response to comment 5: Your comments have been noted and support the proposed regulation.

Comment 6: Commentors provided references to several studies to support this proposed regulation recognizing chlorpyrifos as contributing factor to the decline of bees and other pollinators in New York State.

(Commentors 15, 20, 21, 23, 27)

Response to comment 6: Your comments have been noted and support the proposed regulation.

Comment 7: Several people commented that the Department should delay the effective date of the chlorpyrifos product registration cancellations.

(Commentors 2, 3, 5, 6, 7, 8, 9, 10)

Response to comment 7: The chlorpyrifos product registration cancellations are separate actions and are not considered part of this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

Comment 8: Several commentors requested that the Department use the authority provided in Environmental Conservation Law Section 33-0715 to appoint an Advisory Committee consisting of representatives from the health, science, and agriculture disciplines. The commentors also asked to revise the final regulation and the registration cancellations based upon the recommendations of the Advisory Committee and if necessary, allow the proposed regulation to expire and propose a new rule reflecting the recommendations of the Advisory Committee.

(Commentors 2, 3, 8, 9, 10)

Response to comment 8: The provisions of Environmental Conservation Law Section 33-0715 relate to pesticide product registration matters, including the suspension and cancellation of pesticide product registrations. The proposed rulemaking is not an action associated with a pesticide registration, cancellation, or suspension of a specific pesticide product; it is a prohibition of an active ingredient. Therefore, this section of the law is not applicable to this rulemaking.

Under the provisions of Environmental Conservation Law Section 33-0303, the Commissioner is authorized to adopt, promulgate, and issue such rules and regulations as the Commissioner deems necessary to carry out the provisions of Article 33. Section 33-0301 indicates that it is a legislative determination that the regulation of the registration of pesticides is needed in the public interest. Under Section 33-0301, the Commissioner has the power to promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection and take into account the cumulative impact upon all of such resources in making any determination in connection with any regulation.

The Commissioner has deemed it necessary to follow the Legislature's intent and the Governor's directive to further protect the public, workers, environmental resources, and pollinators by eliminating exposure to chlorpyrifos products. Therefore, the request to delay this rulemaking will not be accommodated. In addition, the chlorpyrifos pesticide product registration cancellation request is beyond the scope of this rulemaking.

Comment 9: Several commentors objected to the chlorpyrifos pesticide product registration cancellations and the proposed rulemaking to permanently prohibit all chlorpyrifos use in New York State. This objection was based upon the need for chlorpyrifos to be used as a means of pest resistance management associated with an Integrated Pest Management (IPM) program. The commentors described their use of chlorpyrifos, which in some cases will be limited to one application per growing season, and the need to conduct several applications of alternative pesticides to achieve similar pest control. This potential increased use of alternative pesticides, including pyrethroids and neonicotinoids, led to the commentors' concern about enhancing pest resistance and inhibiting their ability to effectively manage pests, crops and turf.

(Commentors 3, 5, 6, 9, 10)

Response to comment 9: Although the chlorpyrifos pesticide product registration cancellation process is beyond the scope of this proposed rulemaking, the Department did identify concerns about pest resistance and IPM to be addressed as a result of this proposed rulemaking. The Department considered IPM and resistance management during the development of this proposed rulemaking and recognized that efforts are needed, and some are already underway, to develop alternatives and IPM techniques to address the loss of chlorpyrifos. The Department also consulted with Cornell University College of Agriculture and Life Sciences to discuss potential pest resistance and IPM impacts to agriculture and industry. Although there are significant pests that chlorpyrifos products are used to control in certain crops, and there are some short-term impacts to growers, there are some effective, albeit more costly, alternatives that can help to mitigate development of significant pest resistance. It was determined that research and

development of alternative products and practices should reduce long-term agricultural impacts associated with pest resistance and IPM.

Comment 10: Several commentors were concerned about the disposal or use of existing stocks and inventory of chlorpyrifos pesticide products to ensure that they can comply with the proposed regulation. This concern led to a request to allow storage of chlorpyrifos pesticide products covered by the proposed rulemaking until January 31, 2022. In addition, there were several requests for the Department to provide adequate CleanSweepNY events and provide outreach to assist with the disposal of these products.

(Commentors 2, 3, 4, 5, 6, 7)

Response to comment 10: Following the effective date of the proposed regulation the application of chlorpyrifos pesticide products will not be permitted; however, the May 3, 2021 enforcement discretion will allow the use of chlorpyrifos pesticide products for possession, transport, storage, or handling of open or closed containers that were already in the possession of distributors and users prior to their effective date of cancellation. This discretion only allows this use for the purposes of shipment out of state or for proper disposal until February 1, 2022. In addition, as resources allow and based upon demand the Department will plan CleanSweepNY events to accommodate the disposal needs for chlorpyrifos pesticide products.

Comment 11: A couple of commentors inquired about the timing of the chlorpyrifos pesticide product registration cancellations and why they were not given several years to use existing inventory as was the case with past pesticide product cancellations.

(Commentors 2, 3)

Response to comment 11: The chlorpyrifos pesticide product registration cancellations are not part of this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

Comment 12: Several comments were made that the proposed rulemaking will create a direct economic hardship for agricultural producers and turf managers since many alternative products are more expensive and require multiple applications. The expense and the need to conduct multiple applications makes these alternative products less desirable options to control pests on certain fruit and vegetable crops and turf.

(Commentors 2, 5, 6, 8, 9, 10)

Response to Comment 12: The Department recognized that there could be potential economic impacts to agricultural producers associated with this regulation as described in the Regulatory Impact Statement. This regulation was developed to protect environmental resources and people. Various factors were weighed during this decision-making process including the need for the continued use of this pesticide, the EPA draft risk assessments, and other information. These sources indicate that there are risks to pollinators and other environmental resources, that occupational handler risks are still a concern, and that the neurodevelopmental effects from chlorpyrifos remain uncertain. The Department also reviewed the pesticide annual reports for the

sales and use of chlorpyrifos in New York since 2013. This evaluation of the reports indicates that there is relatively little use of this pesticide in the state. Based upon the information reviewed and the uncertainties associated with many aspects of chlorpyrifos use, the Department concluded that the prohibition of chlorpyrifos will help protect workers, environmental resources, pollinators, and children even though it may have economic impacts on agricultural producers; however, these impacts should be limited.

Comment 13: Several commentors indicated that the alternatives to chlorpyrifos may also pose health and ecological impacts associated with their use.

(Commentors 4, 5, 10)

Response to Comment 13: There are several pesticides that potentially can be used as alternatives to chlorpyrifos. These alternative active ingredients should be used and evaluated on a case by case basis and the least toxic material should be chosen by the user when needed. All pesticides have precautions associated with their use, which may be identified during the Department's registration process. However, the use of chlorpyrifos has been brought under additional scrutiny by the Department due to the risk, exposure, other information reviewed, the Governor's directive, and the Legislature's intent to prohibit its use and eliminate potential exposure to the public and environmental resources.

Comment 14: A comment was made about children working in the fields being exposed to pesticides. The commentor's view was that children should not encounter chlorpyrifos due to the New York State Labor Laws which limit the ability for growers to employ children on their farms.

(Commentor 3)

Response to Comment 14: The Department agrees that in many cases children will not be directly exposed to pesticides during agricultural pesticide applications unless there is off-target movement of the pesticide. However, there could be exposure through other sources. In New York State children are permitted to work in agriculture harvesting crops at 12 years of age under certain circumstances where there could be potential chlorpyrifos exposure. In addition, farm workers may be transporting chlorpyrifos residues from the work environment to their residences, potentially exposing children to these residues.

Comment 15: Several commentors remarked that political processes, including Governor Cuomo's veto and directive associated with the chlorpyrifos bill, passed by both houses of the legislature, circumvented the Department's science-based pesticide registration process.

(Commentors 1, 5, 8)

Response to Comment 15: In response to the Governor's directive, the Department reviewed the most recent available data from EPA, including EPA's September 15, 2020 draft ecological risk assessment for registration review of chlorpyrifos and the September 21, 2020 draft human health risk assessment for registration review of chlorpyrifos. Independent of the Governor's directive the Department's proposed rulemaking was supported by the information reviewed and

the uncertainties about chlorpyrifos use specified in these documents; consequently, the Department initiated the rulemaking process to prohibit the use of chlorpyrifos.

Comment 16: Several commentors expressed concerns that there are not suitable alternatives to replace chlorpyrifos pesticide products for pests including the cabbage maggot, onion maggot, and bluegrass weevil. Some of these commentors have requested that either existing stocks of these materials be permitted until a viable alternative is found or limited use of this material be permitted for the control of certain pests.

(Commentors 2, 4, 5, 6, 7, 8, 9, 10)

Response to Comment 16: The Department has determined that the need to protect workers, environmental resources, pollinators, and children is essential and a complete prohibition of the use of chlorpyrifos products will help accomplish this protection. The variables associated with pest control and the methods available to register and regulate pesticides make it difficult to limit pesticides to certain uses; therefore, a complete prohibition is the only viable mechanism to achieve the Department's and Governor's goal of protection of public health and the environment from chlorpyrifos. Research into alternative products will need to continue with New York State research and academic institutions and others to find solutions to control these pests.

Comment 17: One commentor asked if the Department has considered options for the continued use of chlorpyrifos containing pesticides without a complete ban. In addition, this commentor asked if the Department considered the implications of a complete ban of this pesticide active ingredient.

(Commentor 9)

Response to comment 17: The Department considered alternative approaches as outlined in the Regulatory Impact Statement. Furthermore, the Department also weighed the implications associated with the continued use of this material as well as its prohibition. Part of the Department's mission is to ensure that pesticides are available for the control of pests. However, when the options and required protections were evaluated, the need to protect workers, environmental resources, pollinators, and children outweighed the continued need for this pesticide. It was therefore decided that a complete prohibition of the use of chlorpyrifos would best fulfill that part of the Department's mission.

Comment 18: One comment received is not relevant to this rulemaking.

(Commentor 36)

Response to comment 18: Comment acknowledged

Commentor	Commentor Number
Corteva Agriscience	1
Helena Agri-Enterprises, LLC	2

Bittner Singer Orchards	3
New York Farm Bureau	4
New York State Agribusiness Association	5
New York State Turfgrass Association, Inc.	6
Robert Nolan	7
Telisport W. Putsavage	8
Tom Kaplun	9
Maxwell Torrey	10
Northeast Organic Farming Association of New York	11
American Academy of Pediatrics	12
American Bird Conservancy	13
Barbara Freeman	14
Beyond Pesticides	15
The Child Labor Coalition and the National Consumers League	16
David Barouh	17
Diana Stahl	18
Dorothy Reilly	19
Earthjustice	20
The International Initiative to End Child Labor	21
Farmworker Justice	22
Friends of the Earth	23
Grassroots Environmental Education	24
Human Rights Watch	25
James L. Hicks	26
Jeannine Lavery	27
Joseph Treimel	28
Katharine Tussing	29
Megan K. Horton, PhD, MPH	30
Migrant Clinicians Network	31
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